IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No.1535 of 2007

Niraj Kumar Singh]
aged about 32 years]
occupation service]
residing at 301 Sarod Bldg]
Lokpuram, Thane (West).]...Petitioner

vs

1. Union Bank of India.]
   Union Bhavan, 239 Vidhan Bhavan]
   Marg, Mumbai 400 021.]
   ]
2. The Disciplinary Authority,]
   Assistant General Manager,]
   Industrial Relation Section, 8th floor,]
   Central Office Union Bank of India]
   Mumbai 400 021.]...Respondents

Mr A.R. Singh for the petitioner.
Mr A.D. Shetty for respondent.

CORAM: SWATANTER KUMAR,C.J.,&
DR.D.Y. CHANDRACHUD, J.

JUDGMENT RESERVED ON 15.10.2007
JUDGMENT DELIVERED ON 29.10.2007

JUDGMENT(Per Swatanter Kumar,C.J.):

Rule. Respondents waive service. By consent Rule made returnable forthwith. Heard both sides.

2. Vide Order dated 28th February 2007, the petitioner was

dismissed from service with immediate effect on the basis of the inquiry into the article of charges conveyed to him on 26th April 2006. Aggrieved therefrom the petitioner preferred an appeal, which came to be dismissed by order dated 4th June 2007. The appellate authority, while dismissing the appeal recorded the following findings:

> "The circumstantial evidence indicate that the appellant had prepared the ground for this fraud by first changing the linked account number from 15 digits to 16 digits making the account of Shri Sher Bahadur Thapa in the off line mode, then viewing his PIN, fraudulently withdrew the amount of Rs.15,000 is very strong with no rebuttal from the defence side. The card of Shri Thapa which was given to dispatch clerk on 14th December 2005, and was also entered in the dispatch register on the same day but was dispatched on 20th December 2005. This means that the card was lying in the department on that fateful day. The duplicate card was received by Shri Thapa only on 24.12.2005.
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> The fraudulent withdrawals have been effected at the ATM at Kapurbawadi Branch same day, at 8.47 and 8.48 p.m. There is a gap of about approx two hours between the time of leaving Central Office by Shri Singh and the time of the withdrawals. Moreover, the appellant has admitted having changed the account number of Shri Thapa from 16 digits to 15 digit number on 15.12.2005.
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> Thus, circumstantial evidence lead to believe Shri Singh's involvement in the fraudulent withdrawal.
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> Since all the changes were made in the ID of Shri Singh and he has agreed for the changes made by him, his contention that some body must have seen and stolen his ID is not possible and not

acceptable. OMF record indicate that the account number of Shri Sharma was changed from 15 digit to 16 digit and again from 16 digit and 15 digit on 27.12.2005 under ID of Shri N K Singh. Shri Sharma withdrew Rs.200 on 25.12.2005 through off line mode. Shri Singh prepared internal voucher debiting S B A/c of Shri Sharma and credited to swap A/c ATM on 27.12.2005. in the normal course LB advice is raised in case of off line transactions., The relevant vouchers were passed by Shri Singh and entered in CBS system under his own finacle. Therefore his above contention is false.

The record reveals that when the fraudulent withdrawal came to notice of he management, he was called in the cabin of the AGM RBD on 4.1.2006 where CM was also present. Shri N K Singh submitted that he was in confused state of mind and was not able to recollect what had happened on 14.12.2005. He requested to pardon and protect him and save his job. He also agreed to repay the amount of Rs.15,000. However, next day he gave written statement denying any involvement in the fraud which is an afterthought.

All the circumstantial evidence lead to indicate his involvement. Various transactions are entered, passed and authorised with the help of password /ID which is to be held in strictest confidence. He has no explained why the changes in account number were made. Change of account number of Shri Thapa and Sharma by Shri Singh in his ID without permission or knowledge of his superior strongly establish his malafdie intention and his involvement in the withdrawals of amount from the A/c of Shri Thapa through ATM fraudulently. Shri Singh has thus belied the faith of the management.

I do not find any plausible reason to alter the punishment imposed by the Disciplinary Authority and therefore the appeal is rejected."

3. The above findings and the order of the appellate authority have been challenged by the petitioner in the present petition, *inter alia,* on the ground that there was no evidence before the authorities to pass the impugned order and the findings recorded by them are based upon conjunctures and surmises.

4. It is the case of the petitioner that he had been working with the ATM cell of Respondent No.1 for last 3 years with sincerity, devotion and honesty; that there was no complaint against him; that withdrawal of the cash through ATM could be a result of technical error and could in no way be attributable to him; and that use of ID by someone other than the person concerned was neither practical nor possible. The allegation that the petitioner had directed one Shri Gandhi to tear the page of the dispatch register containing the details of dispatch of ATM was factually untrue and incorrect. As a result of the wrong appreciation of the evidence the petitioner had been found guilty of the article of charges and as such the order of dismissal was liable to be set aside.

5. It is also averred in the writ petition that after issuance of the show cause notice dated 31st October 2006 to the petitioner a written complaint was filed with the Marine Drive Police Station by the Bank but the name of the petitioner was not

mentioned in the police report and it related to the fact that some unknown person had taken ATM card and withdrew a sum of Rs.15,000/- from Panvel branch and as such entire disciplinary proceedings are vitiated as the petitioner cannot be blamed for any of the alleged irregularities.

6. It may be noticed that the petitioner was appointed as the Assistant Manager on 22nd October 2001 and since then he had been working with the Union Bank of India, Nariman Point branch. On 14th December, 2005 a charge-sheet was served upon the petitioner while he was in the controlling office of the ATM cell. This charge-sheet was related to failure to take proper steps to ensure and protect the interest of the Bank, having failed to discharge his duties with utmost honesty and integrity, unauthorised withdrawal by the petitioner of an amount of Rs.15,000 on 14th December 2005 from the account of Shri Sher Bahadur Thapa and an amount of Rs.200 from the account of one Shri O.P. Sharma. Specific charge was levelled against the petitioner that he had changed the account number of Thapa from 16 digits to 15 digits for bringing the original status in CAFA on 15th December 2005 while duplicate ATM card was issued in the account of Thapa and delivered to him

on 24th December 2005 and the amount was withdrawn on 14th December 2005.

7. The petitioner was suspended vide order dated 27th January 2006. The petitioner requested for inspection of certain documents which was provided to him whereafter the petitioner submitted his detailed statement of defence on 14th June 2006. His reply was found unsatisfactory by the competent authority. The inquiry officer was appointed, who completed his inquiry proceedings and submitted his report dated 18th October 2006, copy of which was furnished to the petitioner. After receipt of his reply the petitioner was dismissed from service vide order dated 28th February 2007. The appeal against the same was also dismissed as aforesaid on 4th June 2007.

8. The first and the foremost question that has to be answered by the Court is whether the grounds taken by the petitioner while impugning the order of dismissal are the one which would fall within the scope of judicial review in terms of Article 226 of the Constitution of India. All the grounds that have been taken by the petitioner are primarily based upon appreciation and/or re-appreciation of the evidence. It is a settled principle of law that in exercise of its powers under

Article 226 of the Constitution of India, the Court does not sit as a Court of Appeal on fact and law. The order essentially must be one which is perverse, not supported by any evidence or of the nature where statutory regulations have been violated, that too, to the prejudice of the delinquent officer. None of these conditions are satisfied in the present case. The concerned authorities had examined the entire evidence and thereafter found that the petitioner is guilty of the charges. Upon considering the reply submitted by the petitioner, the authorities imposed the punishment of dismissal from service vide order dated 28th February, 2007, against which the appeal preferred by the petitioner was also dismissed vide order dated 4th June, 2007, by giving cogent and proper reasoning. The order of the appellate authority has been based upon due application of mind and after consideration of the various contentions raised by the petitioner.

9. In the case of *Coimbatore District Central Co-operative Bank* vs. *Coimbatore District Central Co-operative Bank Employees Association and another,* 2007 (4) SCC 669, the Apex Court, while explaining the limitation of judicial review in service matters, stated the principle that findings recorded during the departmental inquiry are normally not interfered with

by the Courts in exercise of its writ jurisdiction. The Court held as under.-

> " 34. As observed by this Court in *M.P. Gangadharan v. State of Kerala* [(2006) 6 SCC 162] the constitutional requirement for judging the question of reasonableness and fairness on the part of the statutory authority must be considered having regard to the factual matrix in each case. It cannot be put in a straitjacket formula. It must be considered keeping in view the doctrine of flexibility. Before an action is struck down, the Court must be satisfied that a case has been made out for exercise of power of judicial review. The Court observed that we are not unmindful of the development of the law that from the doctrine of "Wednesbury unreasonableness", the Court is leaning towards the doctrine of "proportionality". But in a case of this nature, the doctrine of proportionality must also be applied having regard to the purport and object for which the Act was enacted."

10. The above view was reiterated by the Supreme Court in the case of *Bank of India and others* vs. *T. Jogram* [(2007) 7 SCC 236], where the Court held that it was a well-settled principle of law that judicial review is not against the decision. It is against the decision making process. The Court also indicated that the judicial review under the Administrative Law has to be exercised guardedly and every irregularity would not vitiate the departmental enquiry. In the case of *Principal Secretary, Govt. of A.P. And another* vs. *M. Adinarayana* (2004) 12 SCC 579], the Supreme Court also stated that the

principle of judicial review cannot extend to examination of the correctness of the charges as it is not an appeal but only a review of the manner in which the decision was taken.

11. In the departmental enquiry, the petitioner was granted fair opportunity and in fact there is no serious averment made by the petitioner in the writ petition that any statutory Rules or Regulations were violated and/or there was violation of principles of natural justice coupled with prejudice to the petitioner. Merely because on the evidence certain conclusions could not have been arrived at or that a different view was possible would be no ground for this Court to disturb the concurrent findings recorded by the departmental authorities. Even otherwise, the allegation of withdrawal of money from the account of others while functioning in the ATM Cell of the Bank on the basis of a card is a serious matter and the Court cannot treat such a charge lightly so as to disturb the findings of fact.

12. Equally without merit is the contention raised on behalf of the petitioner that the Bank had filed a complaint with the police in which he had not been named and as such the departmental proceedings would be vitiated in law. Firstly, it may be noticed that, according to the Bank, they had made a general complaint

to the police as they wanted the entire matter to be investigated. Furthermore, lodging of a police report is neither a bar to the commencement and conclusion of the departmental proceedings nor any doubt can be created on these proceedings. The scope of a criminal trial, its limitations and standard of proof in criminal and departmental proceedings is entirely distinct and different. Strict rule of evidence are not applicable to departmental proceedings. The departmental proceedings would be covered on the ground of preponderance of probability, while in criminal trial it has to be proved beyond any reasonable doubt. In the case of *Lalit Popli* vs. *Canara Bank and others* [(2003) 3 SCC 583], the Supreme Court clearly stated that nature of proof required in an enquiry is preponderence of probability and technical rules do not apply to them. Once there is sufficient evidence to come to a reasonable conclusion by a person of normal prudence that article of charges is established on the basis of preponderance of probabilities, then conclusion of guilt may not be interfered with.

13. Lastly, an halfhearted attempt was made on behalf of the petitioner that the punishment inflicted on him is too harsh and not commensurate with the gravity of the charge. We are

unable to accept this submission inasmuch as the Court will interfere with the quantum of punishment only when such punishment shocks the judicial conscience of the Court and/or is shockingly disproportionate to the gravity of the charge. Gravity of misconduct would be a precept for determining the quantum of punishment. In this connection, reference can be made to the decision of the Supreme Court in the cases of (i) *General Manager, Appellate Authority of India and another* vs. *Mohd. Nizamuddin* [(2006) 7 SCC 410], and (ii) *U.P. State Transport Corporation, Dehradun* vs. *Suresh Pal* [(2006) 8 SCC 108].

14. In the light of the well established principles of law and the seriousness of the article of charges proved against the petitioner, it is difficult for this Court to hold that the view taken by the authorities below in imposing the punishment of dismissal from service is shockingly disproportionate or would shock the judicial conscience of the Court. The relationship of the Bank and its customer is relationship of great faith and any small dent to this relationship *de hors* the quantum of amount unauthorisedly withdrawn is likely to have adverse effects of wide magnitude upon the business of the Bank. The Appellate Authority considered the contentions raised on behalf of the

petitioner in its correct perspective and we are unable to find any error of jurisdiction in the orders passed by the respective respondents. We have also noticed that the enquiry was held in consonance with the prescribed procedure and principles of natural justice.

15. Resultantly, we find no merit in this writ petition and the same is dismissed, while leaving the parties to bear their own costs. Rule stands discharged.

CHIEF JUSTICE

DR. D.Y.CHANDRACHUD, J.